REMARKS

The Amendments

The claims are amended to address the 35 U.S.C. § 112 rejections and direct the claims to the subject matter apparently indicated to be allowable over the prior art. The claims now recite that the compatibilizer (C) comprises "(C3), an ethylene/alkyl-(meth)acrylate/unsaturated epoxy terpolymer and, optionally, (C1), a copolymer of styrene and maleic anhydride having an average molar mass of between 800 and 10,000." It is noted that previous claims 15, 21, 25, 27-28, 31, 33-35 and 41 directed to such subject matter were not subject to the prior art rejection. Accordingly, it is submitted that the above amendments would put the application in condition for allowance or materially reduce or simplify the issues for appeal. The amendments do not raise new issues or present new matter and do not present additional claims. These amendments were not earlier presented because the apparent allowability of such subject matter was not clear and the 35 U.S.C. § 112 rejections were new in the Final action. Accordingly, it is submitted that the requested amendments should be entered.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejection under 35 U.S.C. § 112, first paragraph

The rejection of claims 10-43 under 35 U.S.C. § 112, first paragraph, as containing new matter is rendered moot by the above amendments. The claims containing the alleged new matter have been canceled or amended to recite the correct number of styrene units, as recognized by the Examiner.

The Rejection under 35 U.S.C. § 112, second paragraph

The rejection of claims 11-15 and 25-41 under 35 U.S.C. § 112, second paragraph, is rendered moot, at least in part, by the above amendments.

Claim 14 is canceled and the "high impact polystyrene" term in claims 11, 12 and 26 has been replaced with the term having proper antecedent basis.

Regarding antecedent basis in the base claim for mixtures of components in previous claims 11-14, 20, 22, 30-33 and 41, most of these claims are now canceled. As to claims 11 and 12, the base claim has been amended to support the mixtures. Such mixtures are clearly supported by the disclosure at page 4, lines 19-20. As to claim 13, mixtures of C1 and C3 for the compatibilizer have clear antecedent basis in the new main claim and in the disclosure at page 15, lines 12-15.

Regarding the "up to" term in claims 15 and 25, it is urged that, in context, the meaning is evident that zero cannot be included. The claims require a terpolymer of ethylene/alkyl (meth)acrylate/unsaturated epoxy; such a terpolymer would not be provided unless some alkyl(meth)acrylate and unsaturated epoxy were included. Further, one of ordinary skill in the art would expect the plain meaning of "up to" not to include zero since otherwise the number "0" would be the standard usage. In context, it is submitted that there would be no confusion to one of ordinary skill in the art.

For the above reasons, it is urged that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

The Rejection under 35 U.S.C. § 103

It is believed that the rejection of claims 10-13, 16-19, 23, 24, 26, 30, 32, 38, 40 and 42 under 35 U.S.C. § 103, as being obvious over EP 242158, is rendered moot by the above amendments. As discussed above, the claims have been amended so that they are directed to subject matter which was in claims not subject to this rejection, i.e., where the compatibilizer comprises a C3 component and, optionally, a C1 component. The reference fails to disclose or suggest a polymer composition having a compatibilizer as recited in the instant claims.

Although unnecessary, applicants point out that data in the specification further supports the nonobviousness of this claimed invention. Table 1 on page 18 of the instant specification discloses the results of property tests on polystyrene polymer compositions, some with compatibilizers according to the invention. The last two columns of the table are according to the current claims. The second to last column contains Lotader AX compatibilizer which is according to applicants' C3 component. The last column contains Lotader AX and SMA 2625 which is according to applicants' claimed embodiment containing both a C3 and C1 component as compatibilizer. The data show that the compositions according to the claims exhibit significantly advantageous properties in elongation at break compared to the non-compatibizer polystyrene and the polystyrene with other compatibilizers not according to the current claims. Such advantages could not have been expected from the prior art and, thus, further support the nonobviousness of the current claims.

For all of the above reasons, it is urged that EP 242,158, considered as a whole in view of the record herein, fails to render the claimed invention obvious to one of ordinary skill in the art. Thus, the rejection under 35 U.S.C. § 103 should be withdrawn.

It is submitted that the application is in condition for allowance. But the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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Attorney Docket No.: ATOCM-202

Date: April 23, 2004

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